IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 637 of 1999

CC.1006/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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APPELLANT/COMPLAINANT:

MOHANAN, S/O. JANARDHANAN, POOVAKKATTUVILA VEEDU, VAMANAPURAM DESOM, PULIMUTTU VILLAGE, TRIVANDRUM.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS/ACCUSED:

1. SHRI K. RAGHAVAN, THADATHARIKATHU HOUSE, KARIMKUTTIKKARA P.O., MELATTUMOOZHI, POOVATHUR, VAMANAPURAM VILLAGE, TRIVANDRUM.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERLAA, ERNAKULAM.

BY PUBLIC PROSECUTOR K.M. FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.APPEAL No.637 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal under section 256 (1) of the Code of Criminal Procedure for absence of the complainant. The compliant was filed under section 138 of the Negotiable Instruments Act alleging that cheque issued by the respondent was dishonoured for insufficiency of funds. The case was adjourned several times and when the case came up on 22.5.1999, the complainant could not attend the court as he was laid up. Even though counsel appearing for the appellant filed application for exemption, the Magistrate rejected the application and acquitted the accused under section 256 (1) Cr. P.C. The accused was also absent on 22.5.1999. Even though Magistrate has got power to acquit an accused for absence of the complainant, it should not be done mechanically.

In the above circumstances, the impugned order is set aside and the matter is remanded. Fresh steps to be taken against the accused. Complainant should be present before the trial court on 29.3.2007. The appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.637 of 1999

Judgment

14-2-2007